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~~4-24.~~ (Amended.) The recombinant DNA construct of Claim ~~20~~ wherein said figwort mosaic virus 34S promoter comprises at least [approximately] 196bp 5' of the TATTTAA [383bp upstream of the BamHI site] at nucleotides [1078 to 1084] 894 to 900 of Figure 4.

~~5-25.~~ (Amended.) The recombinant DNA construct of Claim ~~20~~ wherein said figwort mosaic virus 34S promoter comprises at least [approximately] 362bp 5' of the TATTTAA [549bp upstream of the BamHI site] at nucleotides [1078 to 1084] 894 to 900 of Figure 4.

~~6-26.~~ (Amended.) The recombinant DNA construct of Claim ~~20~~ wherein said figwort mosaic virus promoter comprises at least [approximately] 892bp 5' of the TATTTAA [1.1 kb upstream of the BamHI site] at nucleotides [1078 to 1084] 894 to 900 of Figure 4.

~~7-27.~~ (Amended.) The recombinant DNA construct of Claim ~~20~~ wherein said DNA sequence of interest is a structural gene.

~~8-28.~~ (Amended.) The recombinant DNA construct of Claim ~~20~~ wherein said DNA sequence of interest is an anti-sense DNA sequence.

Cancel Claim 29 in favor of new Claim 43.

~~9-29.~~ A DNA cassette for plant genetic engineering applications, wherein said DNA cassette comprises a recombinant DNA construct of Claim ~~20~~, and a second recombinant DNA construct comprising as operably joined components in the 5' to 3' direction of transcription, a CaMV 35S promoter, a DNA sequence of interest and a transcript termination region functional in a plant cell.--

30. (Amended.) The recombinant DNA [construct] cassette of Claim [29] 43 wherein said [second] DNA sequence of interest joined to said CaMV 35S promoter is different from said DNA sequence of interest joined to said figwort mosaic virus promoter.

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35. (Amended.) A plant cell comprising a recombinant DNA construct of any one of Claims 20, 22-28, 30, 33-34 and 43 [20-34].

36. (Amended.) A plant comprising a recombinant DNA construct of any one of Claims [20-34] 20, 22-28, 30, 33-34 and 43.

Cancel Claims 21, 31-32 and 37-42 without prejudice to renewed prosecution of the subject matter of these claims in a continuing application.

R E M A R K S

I. Introduction

The present case is a file wrapper continuation of application Serial No. 07/431,429 ("the parent case.") A final rejection was issued on March 19, 1992 in the parent case. Applicants filed an Amendment After Final on 24 July 1992. According to the Advisory Action issued on August 10, 1992 in the parent case, the amendments and arguments directed to Section 102 and Section 112 rejections were found persuasive. The Examiner indicated that the response overcame these rejections.

The Examiner did not enter the Rule 116 Amendment in the parent case because no appeal was taken. A final rejection has issued in the present case restating the rejections under Sections 102 and 112. Applicants herein present the same amendments and arguments used to overcome the Section 102 and 112 rejections in the parent case.

Applicants further submit the Rule 132 Declaration of Margaret Sanger on the outstanding issue of obviousness. Applicants contend that the Examiner has not established a prima facie case because the references, individually or combined, fail to provide a basis for concluding that there was